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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

No. 79-1886

PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

WILLIE EDWARD LEVEL,

Respondent.

MOTION TO PROCEED IN FORMA PAUPERIS

CAROLYN FROEBERG
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IN THE

SUPREME COURT OF THE UNITED STATES

No. 79-1886

PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,
v.
WILLIE EDWARD LEVEL,
Respondent.

MOTION TO PROCEED IN FORMA PAUPERIS

Respondent, Willie Edward Level, respectfully requests leave to file his Respondent's Brief in Opposition to Petition for Writ of Certiorari and to proceed in forma pauperis under 28 U.S.C. 1915 pursuant to Rule 46 of the Rules of this Court. This motion is supported by the Affidavit of Willie Edward Level, previously lodged with this Court attached to his Motion to Dispense with Printing. A photocopy of said Affidavit is attached to this motion.

DATED: July 24, 1980.

Respectfully submitted,

CAROLYN FROEBERG
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IN THE

SUPREME COURT OF THE UNITED STATES

No. 79-1886

PEOPLE OF THE STATE OF CALIFORNIA, Petitioner, v. WILLIE EDWARD LEVEL, Respondent.	AFFIDAVIT OF WILLIE EDWARD LEVEL

STATE OF CALIFORNIA)
) ss.
COUNTY OF MONTEREY)

I, WILLIE EDWARD LEVEL, being duly sworn, depose and say, in support of my motion for leave to proceed without being required to prepay costs or fees:

1. I am the respondent in the above-entitled case.

2. Because of my poverty I am unable to pay the costs of said cause.

3. I am unable to give security for the same.

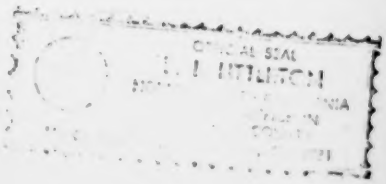
4. I believe that I am entitled to the redress I seek in said case.

5. The nature of said cause is briefly stated as follows: I was sentenced to California State Prison by the Superior Court of the State of California for Ventura County on one count of second degree murder. My conviction was reversed by the California Court of Appeal. The present proceeding was commenced by the People of the State of California.

WILLIE EDWARD LEVEL

Duly witnessed and sworn to before me, a Notary Public, this 25 day of June, 1980.

E. K. Fullerton
Notary Public



IN THE

SUPREME COURT OF THE UNITED STATES

No. 79-1886

PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,

v.

WILLIE EDWARD LEVEL,
Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I am a member of the Bar of the United States Supreme Court and that I have on this date served a copy of the attached Motion to Proceed In Forma Pauperis by depositing the above in the United States Mail, postage prepaid and properly addressed to George Deukmejian, Attorney General, Howard J. Schwab, Esq., Deputy Attorney General, Room 800, 3580 Wilshire Boulevard, Los Angeles, California 90010, and Clerk, California Court of Appeal, Second Appellate District, Division One, 3580 Wilshire Boulevard, Los Angeles, California 90010.

All parties required to be served have been served.

Dated this 24th day of July, 1980, at Los Angeles, California.

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IN THE

SUPREME COURT OF THE UNITED STATES

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No. 79-1886

PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

WILLIE EDWARD LEVEL,

Respondent.

MOTION TO DISPENSE WITH PRINTING OF RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Motion for leave to proceed in forma pauperis

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10

IN THE

SUPREME COURT OF THE UNITED STATES

No. 79-1886

PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,

v.

WILLIE EDWARD LEVEL,
Respondent.

MOTION TO DISPENSE WITH PRINTING OF RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Undersigned counsel hereby respectfully moves that he be permitted to file the Respondent's Brief in Opposition to Petition for Writ of Certiorari, being simultaneously lodged herewith, in typewritten form in compliance with Rules 39 and 46 of the Rules of this Court for the reason that respondent is indigent and unable to pay printing costs. This motion is supported by the Affidavit of Willie Edward Level attached hereto.

DATED: July 23, 1980.

Respectfully submitted,

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State Public Defender

Joseph Levine

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IN THE

SUPREME COURT OF THE UNITED STATES

No. 79-1886

PEOPLE OF THE STATE OF CALIFORNIA, Petitioner, v. WILLIE EDWARD LEVEL, Respondent.	AFFIDAVIT OF WILLIE EDWARD LEVEL

STATE OF CALIFORNIA)
) ss.
COUNTY OF MONTEREY)

I, WILLIE EDWARD LEVEL, being duly sworn, depose and say, in support of my motion for leave to proceed without being required to prepay costs or fees:

1. I am the respondent in the above-entitled case.

2. Because of my poverty I am unable to pay the costs of said cause.

3. I am unable to give security for the same.

4. I believe that I am entitled to the redress I seek in said case.

5. The nature of said cause is briefly stated as follows: I was sentenced to California State Prison by the Superior Court of the State of California for Ventura County on one count of second degree murder. My conviction was reversed by the California Court of Appeal. The present proceeding was commenced by the People of the State of California.

Willie E Level
WILLIE EDWARD LEVEL

Duly witnessed and sworn to before me, a Notary Public, this 25 day of June, 1980.

E. K. Littleton
Notary Public

OFFICIAL SEAL
E. I. LITTLETON
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
MONTEREY COUNTY
My Commission Expires January 25, 1981

IN THE

SUPREME COURT OF THE UNITED STATES

No. 79-1886

PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,

v.

WILLIE EDWARD LEVEL,
Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I am a member of the Bar of the United States Supreme Court and that I have on this date served a copy of the attached Motion to Dispense With Printing of Respondent's Brief in Opposition to Petition for Writ of Certiorari by depositing the above in the United States Mail, postage prepaid and properly addressed to George Deukmejian, Attorney General, Howard J. Schwab, Esq., Deputy Attorney General, Room 800, 3580 Wilshire Boulevard, Los Angeles, California 90010, and Clerk, California Court of Appeal, Second Appellate District, Division One, 3580 Wilshire Boulevard, Los Angeles, California 90010.

All parties required to be served have been served.

Dated this 23rd day of July, 1980, at Los Angeles, California.

Joseph Levine

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SUPREME COURT OF THE UNITED STATES

No. 79-1886

PEOPLE OF THE STATE OF CALIFORNIA,	)
	)
Petitioner,	)
	)
v.	)
	)
WILLIE EDWARD LEVEL,	)
	)
Respondent.	)
	)

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CAROLYN FROEBERG
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IN THE

SUPREME COURT OF THE UNITED STATES

No. 79-1886

PEOPLE OF THE STATE OF CALIFORNIA, Petitioner,	)
v.	)
WILLIE EDWARD LEVEL, Respondent.	)

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, Willie Edward Level, respectfully requests that this Court deny the Petition for Writ of Certiorari, seeking review of the decision of the Court of Appeal of the State of California in this case.

I

THE CALIFORNIA COURT OF APPEAL DECISION IS BASED ON INDEPENDENT STATE LAW

Petitioner aptly characterizes the Court of Appeal opinion as holding (1) that respondent invoked his right to remain silent when he asked to have his mother present before making any statement, and (2) that the police erred in resuming the interview after this request. (People v. Level, 103 Cal.App.3d 899, 905-909 (1980); Petition for Writ of Certiorari [PWC] at 28, 34.) Although conceding that the court's second holding is based on independent state grounds (PWC at 36), petitioner asserts that the first holding is

based solely on the Fifth Amendment to the United States Constitution (PWC at 35-37). The language of the court's opinion, however, belies this assertion.

The California Supreme Court has adopted the safeguards of Miranda v. Arizona, 384 U.S. 436 (1966) as "an intrinsic part of the law of this state." (People v. Pettingill, 21 Cal.3d 231, 237 (1978).) As the California court stated in People v. Disbrow, 16 Cal.3d 101, 113 (1976):

> "[T]he privilege against self-incrimination of article I, section 15, of the California Constitution precludes use by the prosecution of any extrajudicial statement by the defendant, whether inculpatory or exculpatory, either as affirmative evidence or for purposes of impeachment, obtained during custodial interrogation in violation of the standards declared in Miranda and its California progeny. . . ."

"The safeguards enunciated in the Miranda decision and its 'California progeny' [fn. omitted] are required by the privilege but have been tailored to the specific setting of a 'custodial interrogation.'" (People v. Rucker, 26 Cal.3d 368, 379 (1980).) Consequently, "the protection accorded to individuals in this state by the privilege against self-incrimination in the California Constitution is at least as broad as, and often broader than, that accorded by the federal constitution." (Id., at 390.)

Prior to commencing its discussion of the specific issues presented in this case, the Court of Appeal quoted the language of Miranda to the effect that questioning must cease if an individual "indicates in any manner" that he wishes to remain silent. (People v. Level, supra, at 904 citing Miranda v. Arizona, supra, at 473-474.) The court then concluded:

> "We are compelled under Miranda and the holdings of its California progeny (People v. Fioritto

(1968) 68 Cal.2d 714, People v. Ireland (1969) 70 Cal.2d 522; People v. Randall (1970) 1 Cal.3d 948; People v. Burton (1971) 6 Cal.3d 375; People v. Carr (1972) 8 Cal.3d 287; People v. Superior Court (Keithley) (1975) 13 Cal.3d 406; People v. Superior Court (Zolnay) (1975) 15 Cal.3d 729; People v. Disbrow (1976) 16 Cal.3d 101; People v. Enriquez (1977) 19 Cal.3d 221; People v. McClary (1977) 20 Cal.3d 218; People v. Pettingill (1978) 21 Cal.3d 231, to hold, and we do so reluctantly, that the confession was inadmissible and mandates reversal of the judgment."

(People v. Level, supra, at 905.)

Continuing with a discussion of the first of its holdings (i.e., that respondent's request for his mother invoked his right to remain silent), the Level court cited as authority People v. Randall, People v. Superior Court (Keithley), and People v. Burton, all supra, and also relied extensively on its previous decision in People v. Parker, 45 Cal.App.3d 24 (1975). These appellate court citations clearly reveal the Court of Appeal's reliance on independent state grounds for its decision in the instant case.

In People v. Parker, supra, the Court of Appeal characterized the decision of People v. Fioritto, supra, as one in which the California Supreme Court "quot[ed] from Miranda but add[ed] its own emphasis . . . ." (People v. Parker, supra, 45 Cal.App.3d at 28.) This emphasis includes the Miranda holding that questioning must cease if an individual "indicates in any manner" that he wishes to remain silent. (Ibid.) The Parker court, citing People v. Randall, supra, 1 Cal.3d at 956, held that "Miranda rights are deemed asserted where 'conduct reasonably appears inconsistent with a present willingness on the part of the suspect to discuss his case freely and completely with police at that time.'" (People v. Parker, supra, 45 Cal.App.3d at 29; emphasis omitted.)

Based on the foregoing, it is seen that the Court of Appeal's opinion, although founded in Miranda, contains analysis which is inexorably interwoven with Miranda's "California progeny" -- i.e., those decisions based at least in part upon independent state grounds.[1/] Review by this Court is therefore precluded. (Department of Mental Hygiene v.

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1. Despite petitioner's misplaced focus on this Court's recent opinion in Fare v. Michael C., 442 U.S. 707 (1979), the Court of Appeal's discussion of Michael C. in People v. Alfieri, 95 Cal.App.3d 533, 543-545 (1979), serves to further emphasize the independent-state-grounds nature of analysis in the Level opinion. In its argument for granting certiorari in the instant case, petitioner asserts that "in Michael C. this Court cast great doubt upon the viability of the California Supreme Court decision of People v. Burton [supra]." (PWC at 29.) In Alfieri, the same district and division of the California Court of Appeal which decided Level, recognized that Michael C. in fact casts doubt upon the validity of Burton "to the extent the California decision may be said to rest upon rights guaranteed by the United States Constitution." (People v. Alfieri, supra, 95 Cal.3d at 544.) But the court concluded that "[a]ll indications, however, are that Burton will be construed as founded upon the independent state ground of the California Constitution." (Ibid.) The California Supreme Court denied the People's petition for hearing in Alfieri (2d Crim. 31063) on September 26, 1979. (California Advance Sheets, Minutes of the Supreme Court, Vol. 30, p. 23 (1979).) Likewise, the inevitable conclusion here is that the Level opinion is founded upon independent state grounds.

Kirchner, 380 U.S. 194 (1965); Fox Film Corp. v. Muller, 296 U.S. 207 (1935).)

II

THIS CASE DOES NOT PRESENT THE OPPORTUNITY FOR MEANINGFUL REVIEW OF MIRANDA STANDARDS

Assuming arguendo that the Court of Appeal based its decision on federal law, this case nevertheless does not present the opportunity for meaningful review by this Court of any legal proposition of general importance. The decision below turns upon a narrow issue growing out of an unusual factual setting,[2/] and therefore does have general applicability to other situations that arise in the Miranda context.

In the Petition for Writ of Certiorari, petitioner quotes at length from pages 723 and 724 of this Court's Michael C. opinion, beginning with the sentence, "Nor do we believe that a request by a juvenile to speak with his probation officer constitutes a per se request to remain silent." (PWC at 32.) Petitioner then criticizes the Court of Appeal for creating an "inflexible per se" rule that an adult's request to have his mother present before speaking to authorities is deemed an invocation of the right to remain silent. (PWC at 33.) But even a cursory reading of the Level opinion reveals that it does not purport to create a "per se"

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2. In his dissent, Justice Hanson states that he does not "construe either the Miranda case or any of its California progeny to require a reversal under the unique facts of the instant case." (People v. Level, supra, 103 Cal.App.3d at 910, Hanson, J., dis.; emphasis added.)

rule. Indeed, the one paragraph in the opinion which discusses the question presented in this petition commences with the following sentence: "First, in the context of the events surrounding the confession the only reasonable interpretation of defendant's assertion to Detective Singleton that he wanted to have his mother present before he made any statement, is that he thereby invoked his privilege against self-incrimination and wished to remain silent." (People v. Level, supra, 103 Cal.App.3d at 905; emphasis added.)

In characterizing any contrast between the two methods of asserting Miranda rights (i.e., requesting a lawyer and indicating an unwillingness to speak) as a "distinction without a difference" (PWC at 32), petitioner blithely ignores the obvious. Since Miranda rights are founded in the Fifth Amendment self-incrimination privilege -- a privilege which is perhaps most intelligently exercised with the assistance of legal counsel -- a request for such legal assistance is a clear, unambiguous, per se method of invoking these rights. But the request-for-counsel method does not supplant the distinct and different method a suspect may invoke his rights: by indicating either in so many words or "in any [other] manner . . . that he wishes to remain silent . . . ." (Miranda v. Arizona, supra, 384 U.S. at 474.)

In holding that the "only reasonable interpretation" of the uncontradicted facts presented[3/] was that respondent's

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3. At the pretrial hearing regarding admissiblity of respondent's confession no conflict appeared in the evidence. It thereby became the duty of the Court of Appeal, based on [Fn. cont'd]

request for his mother was an indication of an unwillingness to speak and hence an invocation of Miranda rights (People v. Level, supra, 103 Cal.App.3d at 905-906), the Court of Appeal appropriately recognized the different methods available to assert such rights. In so doing, the court did not, either directly or by implication, attempt to create a per se rule, but rather clearly predicated its conclusion solely on the factual context of the case before it.

Moreover, California courts apparently see the Level opinion as correct under federal and state law. The People's Petition for Hearing to the California Supreme Court did not garner a single vote;[4/] most likely because the Court of Appeal's decision is a simple and straightforward application of Miranda principles. The opinion does not purport to say that requesting that a parent, grandparent, probation officer, psychiatrist, or any other person be present prior to questioning constitutes an invocation of the right to remain silent. It recognizes that while an adult may invoke the right to a presence of an attorney only by requesting an attorney, it also acknowledges that since the right against self-incrimination is invoked when a suspect "in any way"

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the doctrine of People v. McClary, 20 Cal.3d 218, 229 (1977), to examine the uncontradicted facts and make an independent determination as to the propriety of the trial court's ruling to allow the confession into evidence. (See People v. Level, supra, 103 Cal.App.3d at 904.)

4. People v. Level (2d Crim. 34398, Apr. 30, 1980), California Advance Sheets, Minutes of the Supreme Court, Vol. 14, p. 6 (1980).

expresses a desire to remain silent, such desire can be manifested in words or actions other than a direct statement to the effect that the suspect does not want to talk. The request by respondent in this case for the presence of his mother, prior to questioning, revealed that for this suspect under these facts in this investigation, a Fifth Amendment right against self-incrimination had been invoked.

III

CONCLUSION

Nothing in this case warrants review by this Court. The Petition for Writ of Certiorari should be denied.

DATED: July 23, 1980.

Respectfully submitted,

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